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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160510416-6416-01]

RIN 0648-BG06

**Fisheries of the Caribbean, Gulf of Mexico, and South
Atlantic; Reef Fish Fishery of the Gulf of Mexico;
Yellowtail Snapper Management Measures**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council). If implemented, this proposed rule would revise the yellowtail snapper commercial and recreational fishing year and remove the requirement to use circle hooks for the commercial harvest of yellowtail snapper in the Gulf exclusive economic zone (EEZ) south of Cape Sable, Florida. The purpose of this proposed rule is to increase the operational efficiency of the yellowtail snapper component of the commercial reef

fish fishery, achieve optimum yield, and decrease the regulatory burden of compliance with differing regulations established by separate regulatory agencies across the adjacent Gulf and South Atlantic jurisdictions.

DATES: Written comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2016-0058" by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal Rulemaking Portal. Go to www.regulations.gov, click the "Comment Now!" icon, complete the required fields, and enter your attached comments.

- *Mail:* Submit all written comments to Cynthia Meyer, NMFS Southeast Regional Office (SERO), 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.),

confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in required fields if you wish to remain anonymous).

Electronic copies of the framework action, which includes an environmental assessment, Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from www.regulations.gov or the SERO Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, NMFS SERO, telephone: 727-824-5305, email: cynthia.meyer@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery includes yellowtail snapper and is managed under the FMP. The FMP was prepared by the Gulf Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the

greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, while also protecting marine ecosystems. To further attain this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

In the southeastern United States, yellowtail snapper are harvested by both commercial and recreational fishermen, with landings coming almost exclusively from waters adjacent to Florida. Yellowtail snapper are managed separately in the Gulf and South Atlantic but are a single genetic stock. The 2012 Southeast Data, Assessment, and Review (SEDAR 27) combined the two areas for stock assessment purposes and indicated that yellowtail snapper in the Gulf and South Atlantic were not overfished and not experiencing overfishing as of 2010, the last year of data used in SEDAR 27. Yellowtail snapper has one overfishing limit, and its acceptable biological catch (ABC) is further subdivided into two regional ABCs for management purposes. The South Atlantic is allocated 75 percent of the stock yellowtail snapper ABC, and the Gulf is allocated 25 percent of the stock ABC. The annual catch limits (ACLs) are equal to the ABCs. The ACL for South Atlantic yellowtail snapper is further divided between the

commercial and recreational sectors, but the ACL for yellowtail snapper in the Gulf is not divided between sectors. On average, about 97 percent of yellowtail snapper landings in the Gulf occur from commercial harvest.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the fishing year for Gulf yellowtail snapper and the gear requirements for the yellowtail snapper commercial sector.

Yellowtail Snapper Fishing Year

Previously, the fishing year for both the commercial and recreational sectors for yellowtail snapper in the Gulf and the South Atlantic was January 1 through December 31. The South Atlantic Council recently changed the yellowtail snapper fishing year in the South Atlantic to begin on August 1, and end on July 31, for both the commercial and recreational sectors (81 FR 45245, July 13, 2016). The South Atlantic Council made this change to align any ACL closure that may be required more closely with the yellowtail snapper peak spawning period. This proposed rule would similarly revise the fishing year for Gulf yellowtail snapper for both the commercial and recreational sectors to be August 1 through July 31 each year. Although the harvest of yellowtail snapper in the Gulf has not exceeded the stock ACL since ACLs were implemented in 2011 (76 FR 82044,

December 29, 2011), this proposed change would similarly more closely align any required ACL closure in the Gulf with the peak spawning season. In addition, having the same fishing year for both the Gulf and South Atlantic would benefit some commercial fishermen that harvest yellowtail snapper in both regions by decreasing the compliance burden of different regulations for the same species in adjacent management areas.

Yellowtail Snapper Gear Requirements

In the Gulf, a person harvesting reef fish, including yellowtail snapper, is required to use non-stainless steel circle hooks when fishing with natural bait (50 CFR 622.30(a)). This measure was put in place to reduce the post-release mortality of Gulf reef fish. This proposed rule would revise this requirement to also allow the use of other non-stainless steel hook types, such as J-hooks, when commercial fishing with natural bait for yellowtail snapper in the area south of a line extending due west from 25°09' N. lat. off the west coast of Monroe County, Florida, to the Gulf and South Atlantic Councils' boundary. The northern boundary of the area for this proposed gear exemption coincides with a management boundary already used by the Florida Fish and Wildlife Conservation Commission.

Landings of yellowtail snapper in the Gulf come almost exclusively from waters adjacent to Florida, with over 97 percent of these landings, on average, by the commercial sector. The Gulf Council determined that allowing other hook types for the commercial harvest of yellowtail snapper in Federal waters off south Florida was appropriate because of the specific fishing method used only by commercial fishermen that allow for quicker de-hooking when the fish are caught using J-hooks. These fishermen attract the fish to the surface using chum and then use small hooks with natural bait and cane poles (rods with approximately 15 ft (4.6 m) of monofilament fishing line tied to the tip of the rod) or spinning reels to catch yellowtail snapper. The landed fish are then quickly de-hooked by pulling the fishing line across a horizontal bar, on which the hook catches, dropping the fish into a hold with ice. Allowing the use of J-hooks is expected to result in less handling of undersized fish that need to be discarded, thereby increasing efficiency and potentially decreasing post-release mortality. This change will also make the gear requirements for the commercial harvest of yellowtail snapper consistent between the Gulf and South Atlantic. In the South Atlantic, snapper-grouper Federal permit holders are not required to use circle hooks when fishing for any

species within the snapper-grouper complex, south of 28°00' N. lat.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework amendment, the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purposes of this proposed rule are to eliminate certain inconsistencies between the regulations established by the Gulf and South Atlantic Councils for the harvest of yellowtail snapper in Gulf waters, to increase the operational efficiency of the yellowtail snapper component of the commercial reef fish fishery, achieve optimum yield,

and decrease the regulatory burden of compliance with differing regulations established by separate regulatory agencies across the adjacent Gulf and South Atlantic jurisdictions. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would remove the requirement to use circle hooks when commercial fishing with natural bait for yellowtail snapper and allow the use of other non-stainless steel hook types with natural baits in an area south of 25°09' N. lat. off the west coast of Monroe County, Florida (Cape Sable) to the Gulf and South Atlantic Councils' jurisdictional boundary. In addition, this proposed rule would change the yellowtail snapper fishing year for the commercial and recreational sectors from January 1 through December 31 to August 1 through July 31.

As a result, this proposed rule would be expected to directly affect federally permitted commercial vessels that harvest yellowtail snapper in the Gulf. Over the period 2010-2014, based on Federal logbook data that include harvests from state waters, an average of 132 vessels per year recorded commercial yellowtail snapper harvests anywhere in the Gulf and an average of 70 vessels per year recorded commercial yellowtail snapper harvests in the Gulf

waters off Monroe County (state and Federal waters). The maximum number of vessels with recorded commercial yellowtail snapper harvests during this period within both groups of vessels was 163 (all vessels Gulf-wide; 2014) and 73 (Monroe County area; 2010 and 2014), respectively. The proposed removal of the circle hook requirement would only be expected to directly affect federally permitted vessels that fish in the Monroe County area, whereas the proposed change in the fishing year could affect all commercial vessels that harvest yellowtail snapper in the Gulf. As a result, this proposed rule would be expected to apply to 70-163 commercial fishing vessels. The average annual gross revenue (2014 dollars) from all species harvested on all trips by the vessels identified with recorded yellowtail snapper harvests in logbook data over the period 2010-2014 within both groups of vessels was approximately \$107,000 (all vessels Gulf-wide) and approximately \$41,000 (Monroe County area).

No small entities associated with the recreational sector would be expected to be directly affected by the proposed change to the yellowtail snapper fishing year. Only recreational anglers are allowed to recreationally harvest yellowtail snapper in Gulf Federal waters and may be directly affected in changes to the fishing year.

However, recreational anglers are not small entities under the RFA. Although for-hire businesses (charter vessels and headboats) operate in the recreational sector, these businesses only sell fishing services to recreational anglers and do not have harvest rights to the yellowtail snapper. For-hire vessels provide a platform for the opportunity to fish and not a guarantee to catch or harvest any species, though expectations of successful fishing, however defined, likely factor into the decision by anglers to purchase these services. Because the proposed change in the yellowtail snapper fishing year would not directly alter the basic service sold by for-hire vessels, this proposed action would not directly apply to or regulate their operations. Any change in vessel business would be a result of changes in angler demand for these fishing services that occurs as a result of the behavioral decision by anglers, *i.e.*, to fish or not, as influenced by the fishing year. Therefore, any effects on the associated for-hire vessels would be one step removed from the anglers' decision and an indirect effect of the proposed action. Because the effects on for-hire vessels would be indirect, they fall outside the scope of the RFA.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. All commercial fishing vessels expected to be directly affected by this proposed rule are believed to be small business entities.

The proposed removal of the requirement to use circle hooks when commercial fishing with natural bait for yellowtail snapper south of 25°09' N. lat. off the west coast of Monroe County, Florida (Cape Sable) to the Gulf and South Atlantic Councils' jurisdictional boundary would be expected to afford more flexibility and improve the operational efficiency of commercial fishing vessels that harvest yellowtail snapper in this area. For example, J-hooks are more effective in the commercial harvest of

yellowtail snapper, allow for quicker de-hooking and less handling of undersized fish that need to be discarded, and result in decreased post-release mortality. Using J-hooks with natural bait is also an allowable gear for the commercial harvest of yellowtail snapper in Federal waters off south Florida under the management jurisdiction of the South Atlantic Council. In south Florida, many fishermen fish in the jurisdiction of both Councils and allowing the use of a common hook type for yellowtail snapper would be expected to increase their operational efficiency and reduce gear expenses. Removal of the circle hook requirement would also be expected to allow fishermen to choose the hook that is more effective for their fishing circumstances, which would be expected to increase their harvest of yellowtail snapper, as well as associated revenue and profit. Thus, this proposed action would be expected to result in increased economic benefits to any affected small entities.

Because some commercial fishing vessels often operate in both state and Federal waters, as well as in both the Gulf and South Atlantic, the proposed change in the fishing year would be expected to result in positive economic benefits associated with improved consistency of the yellowtail snapper fishing seasons in all of these areas.

Consistent seasons, and other regulations, allow fishermen greater flexibility in choosing where and when to fish in general and for specific species. When fishing for yellowtail snapper, consistent seasons would allow fishermen to operate in areas that are most productive and without concern about which regulatory jurisdiction applies. Overall, the increased operational flexibility would be expected to result in increased profit to the directly affected small businesses. These economic benefits may be small, however, and limited to those benefits associated with operational flexibility.

Based on the discussion above, NMFS determines that this proposed rule, if implemented, would result in an increase in revenue and associated profits and would not have a significant adverse economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, South Atlantic,
Yellowtail snapper.

Dated: October 11, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part
622 is proposed to be amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to
read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.7, add paragraph (g) to read as follows:

§ 622.7 Fishing years.

* * * * *

(g) *Gulf of Mexico yellowtail snapper*--August 1
through July 31.

3. In § 622.30, revise paragraph (a) to read as follows:

§ 622.30 Required fishing gear.

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(a) *Non-stainless steel circle hooks.* Non-stainless steel circle hooks are required when fishing with natural baits, except that other non-stainless steel hook types may be used when commercial fishing for yellowtail snapper with natural baits in an area south of a line extending due west from 25°09' N. lat. off the west coast of Monroe County, Florida, to the Gulf of Mexico and South Atlantic intercouncil boundary, specified in § 600.105(c).

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